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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/847,388	05/03/2001	Isabelle Afriat	205731US0	6489
22850	7590	12/13/2006	EXAMINER	
C. IRVIN MCCLELLAND OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				HAGHIGHATIAN, MINA
ART-UNIT		PAPER NUMBER		
1616				

DATE MAILED: 12/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/847,388	AFRIAT, ISABELLE
	Examiner	Art Unit
	Mina Haghigian	1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 28 September 2006.
- 2a) This action is **FINAL**. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,3-20,35,36 and 43-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,3-20,35,36 and 43-47 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) Notice of Informal Patent Application
- 6) Other: _____.

DETAILED ACTION

Receipt is acknowledged of the Request for reconsideration and Remarks filed on 09/28/06. Accordingly claims 1, 3-20, 35, 36 and 43-47 remain pending and under examination.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1, 3-20, 35, 36 and 43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sebillotte-Arnaud (5,814,322) in view of Castro et al (6,306,407).

Sebillotte-Arnaud teaches compositions containing a cosmetically and/or dermatologically acceptable hydrophilic medium, water and optionally an active agent which makes it possible in particular to prevent and/or control pigmentation of the skin or to control greasy skin (paragraph bridging columns 1 & 2). Sebillotte-Arnaud discloses that active agents which can be dissolved in the composition, agents active against greasy skin, such as **retinoic acid, benzoyl peroxide, octopirox, erythromycin, clindamycin, miconazole, econazole and anti-inflammatories such as hydrocortisone**, etc (col. 2, lines 57-67).

Sebillotte-Arnaud discloses that although the amount of active agent in the compositions is not particularly limited, good results may be achieved with compositions

which contain from 0.01 to 25% by weight, preferably 0.1 to 10% by weight, based on the total weight of the composition (col. 3, lines 6-11). Sebillotte-Arnaud lacks specific disclosure on adding fibers to the said formulations.

Castro et al teach a cosmetic or pharmaceutical composition for topical application to the skin which comprises a **fibrous component** for promoting the transfer of moisture and **oil** and removal of unpleasant and unwanted moisture from skin, especially the facial skin. The fibrous component can include wicking fibers, evaporating fibers, or a combination of both. The fibrous component contains wicking fibers to facilitate the transfer of moisture and oil from the surface of the skin to the composition. The composition, when applied to the skin provides a layer of fibers having moisture and oil regulating properties. The compositions maintain the natural and fresh appearance of the skin even during exercise and other hot and humid environmental conditions (col. 2, lines 37-64).

Castro discloses that the pores of the facial skin can become clogged by moisture and oil, and lead to acne, ugly blackheads, and other skin problems (col. 1, lines 19-21). Also disclosed is a method of wicking moisture and oil and evaporating moisture off of the skin by applying to the skin the said compositions, which keep the skin dry and comfortable even during physical activities. The compositions feel smooth, light and natural on the skin and do not strip the skin of essential moisture beneath the surface of the skin necessary to keep the skin healthy (col. 2, lines 15-33).

Castro teaches that the fibers can be selected from the group consisting of polyethylene, rayon, cotton, wool, silk and blends thereof and are treated. The nylon fibers have a denier from about 0.8 to about 20.0 (col. 3, lines 25-52; claims 1 & 4). The fibrous component is present in an amount of from about 0.005 to about 1.0 percent by weight, and preferably from about 0.01 to about 0.5 percent by weight. The shape of the fibers can be any assortment of shapes such as round, bean, bone, oval, irregular, etc. But most preferred shape is round. The fibers have a length from about 0.01 to 0.25 inches. The composition also includes a compatible carrier. The carrier may contain one or more oil component. The carrier comprises oil in an amount of at least about 0.5 to about 60 percent by weight (col. 4, lines 1-30; 49-54).

Castro discloses a method of wicking moisture and oil and evaporating moisture off of the skin comprising applying to the skin the cosmetic or pharmaceutical composition which comprises fibrous component. The benefit of adding fibers to cosmetic or pharmaceutical compositions can be obtained in any type of makeup composition, for example, foundations, eyeshadows, blushes, powders, lipsticks, etc. Also disclosed is the benefit of non-make up compositions such as treatment products, wherein the product is applied to the skin for a therapeutic purpose, but also has the added advantage of controlling oil and moisture on the skin (col. 5, lines 13-33).

Castro discloses additional preferred components of the cosmetic compositions including one or more pigments, fillers, metal stearates, oil-soluble antioxidants, chelating agents, sunscreens such as zinc oxide, oil-soluble actives such as tocopherol and its derivatives, retinol and its derivatives, and the like (col. 5, line 51 through col.

6, line 38). Castro shows ingredients of a foundation formulation in example 1, and discloses a measurement of moisture and oil regulation, where a makeup foundation containing fibers, is tested using a panel of 30 female individuals. The qualifying panelists are selected from ages 18 to 55 and have normal, normal-oily, or oily facial skin, and are regular users of a liquid, transfer-resistant foundation at least 5 days a week (col. 7, lines 22-30). Castro also teaches methods for changing appearance of skin, comprising applying to the skin a composition comprising an effective amount of fibers in a physiologically acceptable carrier.

Although the combined references do not specifically disclose a range of covering index for the composition, these are considered inherent properties of the composition and are not support for patentability.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, given the formulations of Sebillotte-Arnaud comprising active agents for removing excess oil from the skin, to have looked in the art for other potential ingredients which can be added to increase the effectiveness of the formulations, such as fibrous components as taught by the cosmetic/pharmaceutical compositions of Castro et al for controlling oil and moisture of the skin with the reasonable expectations of obtaining a composition which provides the user a complimentary benefit and is non-sticky and easy to use and gives the skin a healthy and smooth appearance.

Claims 1, 3-20, 35, 36 and 43-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Castro et al (6,306,407) in view of Drug Facts and Comparisons.

Castro, discussed above, teaches the benefit of adding skin treatment products such as retinols to the fibrous composition, but fails to disclose other specific active agents such as those listed in instant claim 1.

Drug Facts and Comparisons teaches skincare products such as retinols, azelaic acid, isotretinoin, benzoyl peroxide, tetracyclines, clindamycin phosphate, erythromycin and antifungals in lotions, creams, solutions, bars and other dosage forms (see acne products, pages 542-550a).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made, given the fibrous cosmetic/pharmaceutical compositions of Castro et al for controlling oil and moisture of the skin to have looked in the art for other specific active agents for treating greasy skin, as taught by Drug Facts and Comparisons with the reasonable expectations of obtaining a composition which provides the user with more options of a complimentary benefit (dual action products). In other words, Castro is teaching all the elements of the instant claims except for disclosing all the possible active agents suitable for incorporation into his fibrous formulations. However, Castro writes “retinol or the like”. Drug Facts and Comparisons is brought in to show that it is

Art Unit: 1616

well known by those of ordinary skill in that art that active agents such as retinols and azelaic acid, as well as other compounds listed under the category of Acne Products, are interchangeable, alike and equivalent.

It is thus concluded that Castro provides sufficient teachings to one of ordinary skill in the art to make and use the formulations as claimed. The minor modifications are well known to one of ordinary skill in the art.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Such art includes (JP 07196440).

JP '440 teaches skin cosmetics comprising short fibers which are excellent in water resistance and oil resistance, and provide good conditions of stability and application to the skin. Such cosmetics give a **smooth touch** to the skin with no greasiness. These short fibers, in the length of 0.1 to 5 mm can be synthetic or natural fibers such as cotton, sheep wool, silk, rayon, acrylic type, a **polyamide type** etc. Since the polyamide type is excellent in usability, it is the most preferable type (page 5/22, items 0003 and 0004).

JP '440 also discloses that the short fibers are in the range of 0.1 to 20 deniers, and most preferred are 0.1 to 1.2 deniers. The amount of short fibers is 0.1 to 10 wt% and more preferably 0.5 to 5 wt% (page 6/22, items 0005 and 0007).

JP '440 teaches that the composition may contain other ingredients such as oil, moisturizer, antioxidant, a chelating agent, a pigment, an antiseptic, etc. Also the examples show that the composition may be in the form of an emulsion, foundation or

cream. The methods of preparation for such compositions are also included (pages 6/22 through 14/22).

Response to Arguments

Applicant's arguments filed 09/28/06 have been fully considered but they are not persuasive.

Applicant continues to argue that Sebillotte-Arnaud's compositions are in a hydrophilic carrier while Castro's compositions are in an oil-based carrier. Applicant believes that since the carriers are different and "oil and water don't mix" then there is no motivation for one of ordinary skill in the art to have combined the two references. This is not persuasive because one of ordinary skill in the art does not need to combine the carriers and oil and water are not being mixed. Sebillotte-Arnaud is teaching a composition for cosmetic purposes that contains various ingredients and is used to regulate oil and moisture in the skin. Castro is teaching that fibers are useful in regulating oil and moisture in the skin and is suggesting combining the said fibers with other active agents known for their skin treatments such as retinols. Castro does not indicate that the said fibers are specific to an oil based carrier or that they will not be as advantageous in a hydrophilic base. Applicant has not shown that fibers do not function in a hydrophilic base. One of ordinary skill is not limited to an oil based or hydrophilic base carrier for the said fibrous composition.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by

combining or **modifying** the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, it has been shown that one of ordinary skill in the art would have been able to modify the formulations taught by Castro to suitably combine them with formulations of Sebillotte-Arnaud.

Applicant also argues that “Castro discloses retinol, which is not an active agent against greasy skin”. This is not persuasive because retinol, while labeled an acne product, works by a “reduction in sebum secretion” (see e.g. page 543a, under “Actions” of Drug Facts and Comparisons) and is considered an active agent against greasy skin. Furthermore, many of the active agents listed in the specification and claimed in instant claim 1 are not agents known for combating greasy skin. Active agents such as antibiotics, antifungals, cortisones, anti-inflammatories, anesthetics, minerals, etc.

Applicant states that “Drug Facts and Comparisons cannot compensate for Castro’s deficiencies. Contrary to the Office Action’s assertion, Drug Facts and Comparisons does not disclose ‘retinols’, rather it discloses retinoic acid”. This is not persuasive because 1) Retinoic acid is a metabolite of retinol (see “Actions” on page 543a of Drug Facts and Comparisons). 2) Castro discloses “retinol and its derivatives, and the like”, and it was shown from Drug Facts and Comparisons that many active

agents such as retinoic acid (or its metabolite retinol), clindamycin and Azelaic acids are equivalent in their actions and use in the industry (all are used as acne products).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mina Haghigatian whose telephone number is 571-272-0615. The examiner can normally be reached on core office hours.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Mina Haghigatian
December 8, 2006

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SUPERVISORY PATENT EXAMINER